

General purchasing conditions of CAPOL GmbH, Elmshorn



1.0 Conclusion of the contract, written form, secrecy, amendments, rights of use

1.1 Orders are placed by us on the basis of these general purchasing conditions. Other conditions are not part of the contract, even when not expressly contested by us. Our acceptance of the delivery/service without other conditions being expressly contested shall in no way be construed as an acceptance on our part of your terms and conditions of delivery.

1.2 Payments for visits or for the preparation of offers, projects, drafts as well as for test deliveries will not be made. This shall also apply when we do not place the order.

1.3 Should our order not be confirmed in writing or delivered within eight calendar days of having been received, we are entitled to cancel the order.

Should you accept our order subject to variances, you are required to clearly draw attention to these variances. A contract shall only come into existence when we have given our consent in writing to these variances.

Shipment demands on our part shall become binding at the latest when they are not contradicted by you within three days of their receipt.

1.4 Only orders made in writing are legally binding. Orders made verbally or by telephone require our subsequent written confirmation in order to be legally binding. The same applies to verbal agreements and to subsequent amendments to the contract. The requirement of the written form may only be dispensed with by means of a written declaration.

1.5 You are required to treat the existence of the contract confidentially and may only make public reference to business relationships with us, for instance in advertising material and in lists of references, after having received our written consent to do so.

1.6 The contractual partners commit that they will treat all commercial or technical details not in the public domain and which become known to them through their business relationship, as business secrets. Sub-contractors are to be appropriately bound to this commitment.

All documentation given to you together with the order, for example, drawings, models, samples, remain our property and may not be made accessible to third-parties; they are to be regarded as business secrets and to be treated confidentially. They are to be returned unsolicited once the order is completed.

Should one of the contractual partners learn that information which is to be treated confidentially has come into the possession of unauthorised third-parties or that a confidential document has been lost, he shall immediately apprise the other contractual partner of this fact.

The secrecy commitment continues to apply after the completion of this contract. It does not expire until and to the extent that the manufacturing knowledge contained in the documents handed over has become public knowledge.

1.7 To the extent that this can reasonably be demanded of you, we may demand changes to the delivery object after the contract has been signed. The consequences of such a change to the contract should receive adequate consideration from both contractual parties, particularly as

regards additional or reduced costs and delivery due dates.

- 1.8 You will immediately make available evidence of origin requested by us together with all the necessary information and properly signed. The same applies to vouchers required for turnover tax purposes on domestic and intra-EU shipments.

You will inform us immediately when according to German or any other law a shipment is, wholly or in part, subject to import and / or export restrictions.

- 1.9 You shall keep us informed of the necessary permits and of registration requirements demanded by public authorities for the export and the operation of the objects to be delivered.
- 1.10 You transfer to us, together with the delivery of the object of the order, the right to use it for all known types of use.

2.0 Prices, verification of prices, shipping, packaging

- 2.1 The agreed prices are fixed prices and exclude any kind of additional charges.

Should an “ex factory” or “ex warehouse” price have been agreed, we shall assume only the most favourable freight costs.

The nature of the pricing shall not change the agreed place of fulfilment.

- 2.2 Should the orders relate to deliveries to authorities subject to the public scrutiny of prices, you commit yourself to the unrestricted duty to supply information concerning the composition of the prices to the authorities entitled to verify such prices and acknowledge the permitted prices as binding upon you.

- 2.3 Our order number is to be shown on delivery notes, bills of freight, invoices and all correspondence conducted with us. You are responsible for all consequences arising from this requirement not being complied with.

- 2.4 We shall accept only the quantities or number of units we have ordered. We shall not accept under-shipments; over-shipments of up to 10% are permitted. This shall apply where no other arrangements have been made or agreed for an individual case.

- 2.5 Shipment takes place at your risk. The risk of any deterioration, including accidental loss, remains with you right up to the point of delivery to the agreed delivery address or location where the goods are to be used.

We are not required to clear shipments made by truck before the delivery papers are in our hands.

- 2.6 Your obligation to take back packaging material shall be handled in accordance with the provisions of the law.

Should the packaging material remain your property, then you shall take it back at your cost.

The goods are to be packed in such a way that transport damage is avoided. Packaging materials are only to be used to the extent that they are necessary in order to achieve this goal. Only environmentally-friendly packaging materials may be used.

- 2.7 The interpretation of trade clauses shall be governed primarily by the latest version of the Incoterms valid at the time the contract was concluded.

3.0 Invoicing, payment, certificates

- 3.1 Invoices are to be submitted to us after the shipment, separately and in an orderly manner and shall give the order number and complete delivery information, the description of the goods, the price per unit, the quantity per shipment as well as the number and the date of the delivery together with all related documents and data. Invoices which are incorrectly submitted shall not be deemed to have been received until the invoices are corrected.
- 3.2 Payment shall be made in accordance with the normal practice for the industry, either within 14 calendar days less 3% payment discount or within 30 days without any further deduction, the payment terms to be calculated from the date the goods/service are delivered and the invoice received, subject to no other agreement having been made.
- Payment shall be deemed to have been made on time when it can be proved that we have sent off the giro transfer or the cheque by the payment due date.
- 3.3 Certificates of material tests or other documentation should they have been agreed constitute an essential part of the shipment and are to be submitted to us together with the shipment. They must however be available to us at the latest 10 calendar days after our receipt of the invoice. The payment terms for the invoice shall begin with the receipt of the agreed certificates and documentation.
- 3.4 We are entitled, in the event of defective or incomplete shipments, to withhold a proportionate part of the payment without any loss of rebates, cash discounts or other favourable payment conditions until the shipment is properly fulfilled. Should payment for defective shipments already have been made, we are entitled to withhold other payments which have become due up to the amount of the payments already made.
- 3.5 Should we be in arrears with payments, we shall, in accordance with § 247 of the German Code of Civil Law and to the exclusion of further claims, pay interest at the rate of 5 percentage points above base rate.

4.0 Delivery dates, delivery delays, force majeure, earlier shipment, partial shipments, return of documents, cessation of production

- 4.1 The agreed delivery dates are binding and must be complied with. Relevant for compliance with the delivery date or the delivery period is the receipt by us at the reception point named by us or the successful and timely acceptance of the goods.
- Should the delivery period have been described or confirmed by you as being “probable”, “approximate”, “subject to the usual caveat” or the like, the difference between the delivery date named and the actual date of delivery may be no more than eight calendar days.
- The unqualified acceptance of a delayed shipment shall not signify that compensation claims have been waived.
- 4.2 Should it become clear to you that an agreed date can for whatever reasons not be complied with, you are obliged to inform us without delay and in writing, giving the reasons for and the likely length of the delay.
- You shall in such cases nevertheless take all necessary measures such that the agreed delivery date can be kept or that only a slight delay occurs and inform us in writing what you have done and

intend to do in this particular case to assure prompt delivery.

The communication of a probable delivery delay in no way alters the delivery date agreed.

All costs incurred by us as a consequence of a culpable failure to inform us or of delayed information shall be borne by you.

4.3 We are entitled to the claims foreseen under law in the event of shipment delays on your part.

We are then entitled, also after a reasonable period of grace set by us has elapsed, at our choice either to continue to demand the shipment/services, to declare the rescission of the order with or without claims for damages or to obtain replacement goods from a third-party and / or to claim compensation in lieu of the service ordered. Our claim to the delivery/the service is not waived until we declare in writing the rescission of the contract or demand compensation in lieu of the service ordered.

Additional costs, particularly in the event of covering purchases, shall be borne by you.

4.4 The failure on our part to deliver necessary documents may only be claimed if you have demanded the documents in writing and not received them within a reasonable period of time.

4.5 Force majeure and industrial disputes relieve the contractual partners of their obligations for the duration of the disturbance and to the extent of their consequences. The contractual parties are obliged to take all reasonable steps to pass on immediately necessary information and to adapt their obligations in good faith to the changed circumstances.

We are relieved from the obligation to accept, either wholly or in part, the delivery/service ordered and entitled to rescind the contract when, as a result of the delays caused by the force majeure or the industrial dispute, the delivery/service is from a commercial point of view no longer usable by us.

Should these obstacles last more than three months, each contractual party is entitled without further formalities to rescind the contract.

4.6 We reserve the right in the event of an early delivery not to pay for the goods until the agreed date of payment.

4.7 We shall only accept partial shipments when this has been expressly agreed. These shipments are to be clearly marked as such in the shipment documents. The remaining quantities to be delivered shall also be stated therein.

4.8 You are required to give us immediate notice should you change or re-organise your production. You are required to ensure, in the event of cessations of production, that raw materials, supplies and trading stock in the quantities ordered by us are deliverable for a period of at least one year after production has been ceased.

5.0 **Warranty, safety data sheets, period for claims, subsequent improvement, new shipment, rescission, reduction of purchase price, compensation, batch defects, warranty period, restraint, fresh start, regress**

5.1 All deliveries/services are to be delivered to us free of defects of material and of title. They must be of the agreed quality and conform to the state of technology and to the relevant European and German regulations, rules and guidelines laid down by public authorities, professional associations and trade bodies, in particular those relating to the food trade. You commit that the goods delivered by you, including their packaging and containers, conform to the currently valid German and EU

foodstuffs regulations and that the goods were manufactured or processed under faultless conditions and that the necessary care, hygiene and quality control (good manufacturing practice) was exercised. The deliveries/services must be suitable for the use set out in the contract.

All goods shall conform to the latest safety provisions and must on delivery have been approved by the responsible test agencies and be authorised for use in the manner intended. The deliveries/services must in particular fulfil the job safety regulations, the requirements of the law on the safety of tools and products, the accident prevention and fire safety provisions as well the regulations protecting the environment. You are liable that all machines and systems bear the CE-marking and that they are in possession of an EC-conformity declaration.

You are required to issue the safety data sheets pertinent at the time for your delivery. In the event that the safety data sheets are not delivered or delivered late or in a faulty manner, you shall relieve us from all regress claims made by third-parties. The same applies to all later amendments.

You are required to obtain our written consent should in individual cases any departures from these regulations be necessary. This consent does not limit your liability for defects.

You are required to inform us immediately and in writing should you have reservations concerning the manner of performance desired by us.

5.2 You undertake that in your deliveries/services and also in shipments and subsidiary services made by third-parties that, so far as is commercially and technically possible, you will only use environmentally-friendly products and procedures. You assume liability for the environmental compatibility of the products delivered and also for all consequential damage occurring as a result of an infringement of your legal waste disposal obligations.

5.3 We shall inform you without delay and in writing of all obvious defects as soon as they are discovered under normal operating conditions, at the latest however within five working days of our having received the goods. The period of time for reporting hidden defects is three days from the time the defect was discovered.

5.4 Defects in the delivery/service reported during the warranty period, which also includes the failure to meet specified data and the absence of assured qualities, shall be remedied by you without delay and at no cost (including ancillary costs) either – at our choice – through subsequent improvement or replacement of the defective parts of the shipment or through a new shipment.

You shall bear all costs incurred in establishing and remedying the defects, also those incurred by us, in particular the costs of examination, dismantling and assembly, the costs of transport, freight, labour and material. This shall also apply should such costs be increased by the fact that the object delivered was brought to a place other than the place of fulfilment of the contract.

After a period of grace set by us for subsequent improvement or replacement has elapsed without the defect being remedied, the legal remedies of rescission and price reduction are available to us. An agreed period of time allowed for subsequent performance has the same legal consequences as if we had set a time limit.

It is not necessary to set a time limit in the cases provided for in § 281 section 2, § 323 section 2 and

§ 440 of the German Code of Civil Law (BGB); in particular, when the type of subsequent improvement desired by us is abortive. Subsequent improvement shall be deemed to have been

unsuccessful when it fails at the second attempt. Subsequent improvement or a new shipment shall if necessary be effected in a multi-shift operation or through overtime or through the use of rest days and holidays, should this be necessary for urgent operating reasons on our part and can be reasonably expected of you.

Should we be entitled to rescind the contract and should the non-fulfilment or unsatisfactory fulfilment of the contract be limited to a definable part of your service, then the rescission may be restricted to this part of the service allowing the remaining contract to remain in force.

After the exercise of the right of rescission on account of the non-performance or inadequate performance of the service, as well as in the event of damages in lieu of the performance, we are entitled, when the service or the remainder of the service must be disposed of in some other manner and notwithstanding rights under law, to the payment of an appropriate advance to cover the anticipated costs plus an adequate safety margin. In such a case we are only required to obtain several offers when this would not lead or not threaten to lead to considerable time delays or disturbances of the operating, production or business flow. Work carried out by us shall be charged at normal third-party market rates.

We reserve the right under all circumstances to pursue claims for damages.

5.5 We are entitled, should identical defects appear on more than 5% of a shipment (batch defects), to reject the whole quantity delivered and still in stock as defective and to assert both the legal and the contractually-agreed rights pertinent to claims for defective goods.

5.6 In the event of material defects, we have the right also in the case of purchase contracts, after a period of time for subsequent fulfilment set by us has elapsed without a satisfactory result, in accordance with § 637 of the German Code of Civil Law to apply measures of our own and to claim an advance payment.

Should you fail to meet your obligations for the liability for defects within a reasonable period of time set by us, we may at your cost and at your risk take the necessary measures ourselves or have them performed by a third-party. In urgent cases we may, after agreement with you, undertake the subsequent improvement ourselves or have it carried out by a third-party. We may remedy minor defects ourselves – in fulfilment of our obligation to minimise the damages – without prior agreement with you and without this limiting your commitments arising from the liability for defects. We may then charge you with the necessary expenses. The same applies when unusually high damages threaten.

5.7 Should nothing to the contrary have been expressly agreed, the warranty period shall be two years. This also applies in the event of multi-shift operation. The warranty period begins with the handover of the object delivered to us or to a third-party named by us at the receiving address or utilisation location prescribed by us. In the case of appliances, machines and systems the warranty period begins on the date of acceptance named in our written declaration of acceptance. Should the acceptance be delayed for reasons for which you are not responsible, then the warranty period is two years from the date when the object delivered became available for acceptance. The warranty period for spare parts is two years from the date when they were installed/went into operation and ends at the latest four years after the shipment.

It will be assumed that a defect existed already at the time when risk was passed, when not more

than six months have elapsed since the date of the passing of risk, unless this assumption contradicts the nature of the product or of the defect.

- 5.8 As long as negotiations are being conducted as to whether the defect complained of is justified, the warranty period of the machine/machine parts in question is suspended from the time the defect is reported to the time such negotiations are concluded.

The warranty period for re-worked or replacement parts or services begins with the end of the negotiations or, should an acceptance be agreed, starts to run anew from the time of acceptance. The warranty period shall however under no circumstances end before the expiry of the period of limitation for defects claims agreed for the original delivery or service.

- 5.9 Should claims be made against us on account of a defect in our product due to your goods, then §§ 478 and 479 of the German Code of Civil shall be applied as appropriate in our regress claims against you.

- 5.10 In the event of a culpable infringement of obligations going beyond the delivery of defective goods, e.g. an obligation to clarify, to advise, to investigate or some other obligation to protect the interests of others, we may also claim damages for the resulting consequential damages.

Consequential damages are such damages as we or third-parties suffer as a result of the delivery of defective goods to other legal assets than the goods themselves.

- 5.11 Claims derived from the liability for defective goods shall not arise when the defect is due to the grossly negligent infringement of operating, maintenance or installation instructions, to inappropriate or improper use, defective or grossly negligent treatment and natural wear and tear as well as unauthorised interference with the delivery object on our part or on the part of third-parties.

- 5.12 You will investigate deliveries complained of as defective by us as to the causes thereof and implement measures to prevent defects of this nature arising again. You will document the remedial measures taken and submit these documents for inspection should this be demanded.

6.0 **Quality assurance, product liability**

- 6.1 Should claims be laid against us on account of an infringement of official safety regulations or of domestic or foreign product liability regulations or laws due to a defect in our product which is traceable to your goods, we are entitled to demand compensation for this damage from you to the extent that the defect was caused by goods delivered by you.

This damage also includes the costs of a precautionary recall action. We shall, to the extent that this is possible and reasonable, inform you of the contents and the scope of the recall measures to be taken and give you the opportunity to make comments.

- 6.2 You are required to carry out quality assurance which by its nature and scope is suited to the latest state of technology and, should we request it, to prove the same to us. You will, should we consider this to be necessary, conclude an appropriate quality assurance agreement with us.

- 6.3 Should nothing else have been agreed, you shall mark the delivery objects such that they are permanently recognisable as your products.

- 6.4 You shall moreover adequately insure yourself against all risks arising from product liability, including the risk of a recall action, and, when called upon to do so, shall submit the insurance policy for inspection by us.

7.0 Liability

Your claims for compensation against us, irrespective of the legal basis, shall exclude claims of minor negligence. This liability exclusion does not apply to claims for compensation based on the infringement of essential contractual obligations on our part. It also does not apply in cases of injury to life and limb and health.

In cases of minor negligence in the infringement of essential contractual conditions and gross negligence on the part of ordinary company agents, compensation is limited to the payment of typical damage foreseeable at the time the contract was signed.

To the extent that our liability is excluded or limited, this also applies to the personal liability of our employees, representatives and agents.

8.0 Industrial property rights, rights of use

- 8.1 You warrant that all shipments are free of the industrial property rights of third-parties and in particular that, through the delivery and the use of the objects delivered, patents, licences or other industrial property rights of third-parties are not infringed.
- 8.2 You shall indemnify us and our customers on the first occasion of being called upon in writing to do so for claims made by third-parties due to the possible infringement of industrial property rights and shall bear all the costs we incur in this connection, also the costs of possible legal actions and recall actions. Your indemnity obligation covers all costs necessarily incurred by us in connection with claims of third-parties.
- 8.3 We are entitled to secure at your cost the approval to use the delivered objects and services in question from those entitled to give this approval.
- 8.4 We shall receive from you together with the delivery of an object protected by copyright a simple and unrestricted right to make use of the same in all possible ways.
- 8.5 You shall assign to us, on our requesting you to do so, all claims due from your suppliers arising in connection with the infringement of obligations. Should this be required, you will deliver to us all documents necessary for the assertion of these claims.
- 8.6 The limitation period for the above-mentioned claims is ten years, beginning with the conclusion of the contract in question.

9.0 Partial invalidity

Should individual parts of these general purchasing conditions be legally invalid, the validity of the remaining provisions is not thereby affected.

10.0 Delegation of orders only possible with consent, covenant against assignment, setting-off, right of retention, transfer of contract, change of company name

- 10.1 You are not entitled without our prior written consent to delegate the order or essential parts thereof to a third-party. Should this consent be given you continue to be a joint and several debtor in your relations with us.
- 10.2 You are not entitled without our prior written consent to assign - either wholly or in part - your receivables due from us or to have them collected by a third-party. This consent is deemed to have been granted in the event of extended reservation of title.
Should you assign a receivable due from us to a third-party without our consent, then this assignment is nevertheless valid. We may opt to pay either you or the third-party and thereby fully discharge the debt.
- 10.3 You may only offset receivables which are not disputed or have been established by process of law.
- 10.4 You are only entitled to rights of retention to the extent that they are based on the same contractual relationship.
- 10.5 You are required to inform us immediately of every transfer of contract having the force of law and of every change in company name.

11.0 Data protection

We shall treat your personal data in accordance with the German Data Protection Law.

12.0 Cessation of payments, Insolvency

We are entitled, should you cease payments, a provisional insolvency administrator be appointed, insolvency proceedings be opened relating to your assets or should claims for non-payment of bills of exchange or cheques be laid against you, to terminate the contract, wholly or in part, without notice, and without this giving rise to claims against us.

In the event that we terminate the contract, services performed up to that date shall only be paid for at the contractually-agreed prices to the extent that they can be used by us according to regulations. Damages incurred by us shall be taken account of in the payment.

13.0 Place of fulfilment

Should nothing else have been expressly agreed, the place of delivery for the required service is the delivery address or place of use desired by us; for all other obligations the place of fulfilment for both parties is Elmshorn.

The risks of accidental loss and accidental deterioration do not pass to us until acceptance or receipt at the place of fulfilment.

14.0 Place of jurisdiction

The exclusive place of jurisdiction for all present and future claims arising from the business relationship with businessmen, including claims arising from bills of exchange and cheques, is Elmshorn. The same place of jurisdiction is applicable when you do not have a general domestic place of jurisdiction or when following the conclusion of the contract you relocate your place of

residence or the place where you normally reside abroad or when your place of residence or the place where you normally reside is not known at the time when legal proceedings are instituted. We reserve the right however to assert our claims at any other permissible place of jurisdiction.

15.0 **Complementary law**

As complementary law the law of the Federal Republic of Germany shall be applicable to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980.